Appendix A

United States Court of Appeals
for the Ninth Circuit

United States of America,
Plaintiff-Appellee,

vs.

Harry O'Brien, Clifford Doyle Lee
and James Robert Brown,
Defendants-Appellants.

Nos. 80-1170, 80-1261, 80-1319
D.C. No. 79-55

Appeal from the United States District Court
for the District of Nevada

Edward C. Reed, Jr., District Judge, Presiding
Argued and Submitted July 15, 1981

Filed September 10, 1981

MEMORANDUM

Before: NELSON and NORRIS, Circuit Judges, and
REAL,* District Judge

Appellants O'Brien, Brown, and Lee were convicted, after trial by jury, of possession of a controlled substance with intent to distribute, in violation of 21 U.S.C. § 841 (a)(1), and conspiracy to possess and distribute a controlled substance, in violation of 21 U.S.C. § 846. O'Brien and Brown were convicted, in addition, of interstate travel in aid of racketeering activity (distribution of a controlled substance), in violation of 18 U.S.C. § 1952(a)(3). On appeal, the appellants allege a long list of errors by the

*The Honorable Manuel L. Real, United States District Judge for the Central District of California, sitting by designation.

trial court. We find no merit in any of the appellants' contentions and, accordingly, we affirm the convictions.

Based on our independent review of the record, we uphold the trial court's conclusion that the officers had probable cause to make warrantless arrests of the appellants. Our review also convinces us that the affidavits in support of the search warrants are sufficient to demonstrate probable cause. *See United States v. Fried*, 576 F.2d 787, 790-91 (9th Cir. 1978). The seizure and searches of the Blazer were clearly lawful under *United States v. Johnson*, 572 F.2d 229 (9th Cir.), *cert. denied*, 437 U.S. 907 (1978).

The admission of certain testimony at trial did not violate, under *Bruton v. United States*, 391 U.S. 123 (1968), any appellant's right to confrontation. There is no violation of *Bruton* where, as here, the testimony in question is not "powerfully incriminating." *See United States v. Buckner*, 610 F.2d 570, 574 (9th Cir. 1979).

The admission of Lee's post-arrest statements did not violate his *Miranda* rights. The trial court properly found a waiver by Lee. *See Fare v. Michael C.*, 442 U.S. 707 (1979).

The appellants remaining claims—prosecutorial misconduct, insufficiency of the evidence, insufficiency of voir dire, ineffectiveness of counsel, factual misstatements by the trial court, and double jeopardy—are similarly unpersuasive. None find any support whatsoever in the record.

AFFIRMED.

Appendix B

United States Court of Appeals
for the Ninth Circuit

United States of America,
Plaintiff-Appellee,

v.

Harry O'Brien, Clifford Doyle Lee and
James Robert Brown,
Defendants-Appellants.

Nos. 80-1170, 80-1261, 80-1319
D.C. No. 79-55

Order

Filed Nov. 12, 1981

Before: Nelson and Norris, Circuit Judges, and Real*, District Judge

The panel as constituted in the above case unanimously voted to deny the petitions for rehearing of Defendants-Appellants Lee and Brown, and rejects their suggestions for rehearing en banc.

The full court has been advised of the suggestions for rehearing en banc and no judge of the court has requested a vote on the suggestions for rehearing en banc. Fed. R. App. P. 35(b).

The said petitions for rehearing are Denied and the suggestions for rehearing en banc are Rejected.

*The Honorable Manuel L. Real, United States District Judge for the Central District of California, sitting by designation.